

NEWS from



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POSTMUS COMMENTS ON TODAY'S GRAZING APPEAL DECISION

VICTORVILLE—First District San Bernardino County Supervisor Bill Postmus offered initial comments to a decision released today by the Department of Interior's Office of Hearings and Appeals.

In the decision, Interior Administrative Law Judge Harvey C. Sweitzer handed a mixed bag of legal findings to eight cattle ranchers seeking to overturn recent orders by the federal Bureau of Land Management to remove their cattle from 427,000 acres of California Desert by September 7.

The orders resulted from a recent federal court-sanctioned settlement of an Endangered Species Act lawsuit brought last year against the federal Bureau of Land Management (BLM) by the Tucson-based Center for Biological Diversity.

Today's ruling is the final outcome of an administrative appeal by the ranchers and the County of San Bernardino during which 13 days of evidence and testimony was heard between July 24 and August 7 in Barstow before Judge Sweitzer.

Specifically, Judge Sweitzer concluded in his 106-page decision that:

1. The BLM's Environmental Assessment and Decision Record are legally sufficient under the National Environmental Policy Act (NEPA).
2. The final grazing decisions issued against the eight ranches are not arbitrary and capricious.
3. The final grazing decisions are consistent with the Endangered Species Act (ESA).
4. However, the BLM violated grazing regulations, which require consultation, cooperation, and coordination with the affected permittees.

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As a result, Sweitzer ruled that “therefore the final grazing decisions are hereby set aside and the matters remanded to BLM for further action consistent with this Decision.”

Attorneys representing the ranchers and San Bernardino County are currently studying the decision, therefore it is difficult to say with certainty what options remain for the ranchers, Postmus said.

“One thing is clear--the grazing decisions issued by the BLM are invalid and therefore the BLM must start over and do them right,” said Postmus, who initially urged the County Board of Supervisors to join the ranchers’ appeal.

Postmus said a new Decision Record and environmental assessment would have to be issued following adequate consultation with the affected ranchers. Federal law will require a 15-day protest period after the issuance of the new orders. Therefore, claims by the Center for Biological Diversity that cattle must be removed by Federal Judge Alsup’s September 7th deadline or face contempt is not necessarily true.

It’s impossible for the BLM to comply with Sweitzer’s decision remanding the grazing decision to require removal of the cattle by September 7 because that timeframe will not allow for the required appeal period for the new grazing decisions when they’re issued, Postmus said, adding that the Federal Judge made it clear in authorizing the original settlement that the affected parties’ due process cannot be violated.

The appellants and the county still have the option of challenging the department’s findings with respect to the NEPA and ESA questions in federal court, Postmus said.

Postmus cautioned those sympathetic to the ranchers and to property rights against becoming overly optimistic at this stage, however. “The judge’s rejection of the BLM’s grazing orders is a partial victory at best,” Postmus said. Even though the ranchers were given the consolation of winning on administrative and procedural grounds, Sweitzer supported the BLM and the environmentalist litigants on most of the scientific and legal questions, and the federal district court continues to loom over the case, Postmus added.

Postmus said he is somewhat encouraged at the prospect of new consultations between the BLM and the ranchers in light of a statement released today by the Office of the Secretary of Interior which stated, in part, that “The previous administration made promises that were impossible to keep, and forced the case into this unfortunate and unavoidable position... “We believe that with a process of communication, collaboration and consultation, all to the service of conservation, we can protect the desert tortoise and allow family ranchers to continue their way of life.”

“This statement would have never come out of a Clinton Administration,” Postmus said. “I was very encouraged by my recent meetings in Washington with the new leadership at the Department of Interior, and this statement seems to be in line with what I was hearing from the new Administration in Washington.”